IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 172 OF 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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FARIDABEN INAITBHAI SINDHI - Appellant(s)
Versus
GUJARAT STATE ROAD TRANSPORT CORPORATION & ANR. - Respondent(s)

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Appearance :
SHRI P.S. GOGIA for Appellant(s).
SHRI ASHISH M. DAGLI for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/12/2006

ORAL JUDGMENT

1. The appellant-plaintiff, who could secure a decree in her favour was nonsuited in the appeal, therefore, she is before this Court under Section 100 of

the Code of Civil Procedure, 1908.

1.1 It is not in dispute before me that the plaintiff's husband, namely, Inayatbhai Nazirbhai, who was working as a conductor with the respondent-Institution, died on 1st April, 1991 while in the service of the defendant. The respondent has a policy of compassionate appointment and the limitation for making the application is one year. Under the circumstances, the application ought to have been made on or before 1st April, 1992, but, in the present case, the present appellant-plaintiff filed an application on 11th January, 1993 submitting, *inter alia*, that within the period of limitation, that is, one year, she was not qualified to make the application for appointment, therefore, she could not make the application and under the present set of facts, an order of appointment be made in her favour.

1.2 The respondent-defendant appeared before the trial Court and contested the suit on various counts.

1.3 The learned trial Court, after casting the issues, granted opportunity to the parties to lead evidence and after hearing them, decreed the suit.

1.4 The respondent-Gujarat State Road Transport Corporation filed an appeal, which came to be allowed on 11th April, 2002. Being aggrieved by the said judgement and decree, the plaintiff is before this Court.

2. The appeal was admitted on 12th October, 2006 for hearing the parties on the following substantial questions of law:

> "1) *Whether on the facts and in the circumstances of the case, the learned first Appellate Court was justified in holding that the suit is maintainable in view of the language employed in Section 34 of the Indian Specific Relief Act, even though the plaintiff, while praying for a declaration, had asked for a consequential relief of appointment?*
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> 2) *Whether on the facts and circumstances of the case, the policy of compassionate appointment when provides for limitation, then, whether the period of limitation would be taken to be cut off date for all practical purposes or it would only provide a guideline to avoid unnecessary delay in the matter?*"

3. The learned Counsel for the appellant submits that compassionate appointment is to be made by exhibiting compassion in favour of those, who are needy

and who have lost bread winners. The submission is that the respondent, in the present case, did not take up the issue seriously and erred in rejecting the application on the ground of limitation. It is also submitted that the policy of compassionate appointment must be appreciated in its true perspective and the question of limitation should not be allowed to make an inroad on the rights of the parties.

4. It is not in dispute before me that limitation for making the application is one year from the date of the death.

5. The Supreme Court time and again has said that if limitation for making an application for appointment on compassionate grounds is provided under the Scheme or Policy, then, such limitation has to be adhered to. A person seeking appointment on compassionate grounds cannot say that irrespective of limitation, such person should be appointed. It would be trite to say that if on the date of the death or within the period of limitation prescribed for making the application to secure compassionate appointment, the applicant is not competent or qualified to make the application, then, such person would lose his right. In the present matter, on the date

of death and within the period of one year thereafter, from the appellant's own saying, it would appear that she was not qualified to make such application. If that be so, then, she would lose her right and the limitation, as provided in the policy, would put curtains over her rights. The question No.2, on which the appeal has been admitted, is to be decided against the interest of the appellant-plaintiff. I, accordingly, hold that the respondent-defendant was not unjustified in rejecting the present plaintiff's application for her appointment on compassionate grounds. In view of the answer to the second question, it is not necessary to answer the other question.

6. The appeal deserves to and is, accordingly, dismissed. No costs. Let a decree be framed accordingly.

[R.S.Garg, J.]

*kamlesh**